

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:13 CR 53**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>BRIAN ALBERT McKINNEY,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr style="width:40%; margin-left:0"/>	)	

THIS CAUSE coming on to be heard and being heard before the undersigned upon a Violation Report (#15) filed in the above entitled cause on September 19, 2013 by the United States Probation Office. In the Violation Report, the United States Probation Office alleges that Defendant had violated terms and conditions of his pretrial release. At the call of this matter on for hearing it appeared Defendant was present with his counsel, Jack Stewart, and the Government was present through Assistant United States Attorney, Richard Edwards, and from the evidence offered and from the statements of the Assistant United States Attorney and the attorney for Defendant, and the records in this cause, the Court makes the following findings.

**Findings:** At the call of the matter, the Defendant, by and through his attorney, admitted the allegations contained in the Violation Report. The

Government introduced, without objection, the Violation Report into evidence.

Defendant was charged in a bill of indictment filed on August 6, 2013 with three counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 933(g)(1) and one count of having received a firearm that was not registered to him in the National Firearms Registration and Transfer Record in violation of 26 U.S.C. § 5841, 5861(d), and 5871. A hearing was held in regard to the detention of Defendant on September 17, 2013 and on that date the undersigned entered an order releasing Defendant pursuant to the terms and conditions of a \$25,000 unsecured bond. The undersigned further set conditions of release which included the following:

(8)(s) Defendant participate in one of the following location monitoring program components and abide by its requirements as the pretrial service officer instructs;

(2)(i) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court ordered obligations; or other activities pre-approved by the Pretrial Service Office or supervising officer.

On the evening of September 17, 2013, the Defendant, instead of being at

the residence of his mother and father as he had been directed, left the residence and spent the night with his girlfriend in violation of the terms and conditions of release.

**Discussion.** 18 U.S.C. § 3148(b)(1) provides as follows: The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer -----

(1) finds that there is----

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that ---

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.

There has been shown by clear and convincing evidence that Defendant violated the terms and conditions of his pretrial release. Despite having been advised by this Court both orally and in writing, that he was to be on home detention at the residence of his mother and father at all times, defendant, less than

twelve hours later after his release, violated the terms and conditions of release by leaving the home of his mother and father and spending the night with his girlfriend.

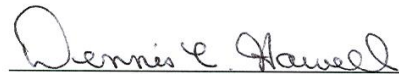
The undersigned finds that based upon the factors set forth in 18 U.S.C. § 3142(g), that there is no condition or combination of conditions of release that would assure that Defendant would not flee or pose a danger to the safety of any other person or the community. Defendant has a significant criminal record, including a conviction in this court, for trafficking in methamphetamine, that conviction having occurred in 2004. The criminal record of defendant shows by clear and convincing evidence that his release would create a risk of harm or danger to any other person or the community. The undersigned further finds that based upon Defendant's immediate violation of terms and conditions of pretrial release that Defendant is unlikely to abide by any condition or combination of conditions of release.

As a result of the above referenced findings, the undersigned has determined to enter an order of revocation revoking the unsecured bond and the terms of pretrial release previously issued in this matter and entering an order detaining Defendant.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that the unsecured bond and terms and conditions of pretrial release entered in this matter are hereby **REVOKED** and it is **ORDERED** Defendant be detained pending further proceedings in this matter.

Signed: September 24, 2013

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Dennis L. Howell  
United States Magistrate Judge

